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RE:

MESSAGE:

Attached is a Request to Withdraw Finality of the Office Action in response to the Office Action dated April 17, 2002.

I hereby certify that this correspondence is being sent by Facsimile Transmission to Commissioner of Patents and Trademarks, Washington, D.C. 20231 on July 12, 2002.



James A. LaBarre, Reg. No. 28,632

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Patent
Attorney's Docket No. 018656-107

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
Manami KUISEKO et al.) Group Art Unit: 2873
Application No.: 09/450,271)
Filed: November 26, 1999) Examiner: T. Thompson
For: REFLECTING MICROOPTICAL) Confirmation No.: 7399
SYSTEM)

REQUEST TO WITHDRAW FINALITY OF THE OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

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Sir:

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The most recent Office Action dated April 17, 2002 was made final. Applicants respectfully submit that this finality is premature for several reasons, and therefore request that it be withdrawn.

In the prior Office Action, dated September 26, 2001, claims 25 and 26 were explicitly allowed. The more recent, final Office Action contains a rejection of claim 25 under 35 U.S.C. § 102 as being anticipated by the previously cited *Braun* patent and a rejection of claim 26 under 35 U.S.C. § 103 as being unpatentable over the *Braun* patent in view of the *Medina Puerta et al.* patent. The Office Action contains the statement "Applicant's amendment necessitated the new ground(s) of rejection presented in the Office action. Accordingly, THIS ACTION IS MADE FINAL." However, there was no amendment to either of claims 25 or 26 that necessitated their rejection for the first time in the most recent Office Action. If the ground of rejection is proper, there is no apparent

Application No. 09/450,271
Attorney's Docket No. 018656-107
Page 2

reason why it could not have been set forth in the prior Office Action, in which the same references were applied against other claims.

In the prior Office Action, claim 24 was not rejected on the basis of any prior art. Rather, it was merely objected to on the grounds that it depended from a claim with a higher number (which was traversed in the Applicants' response). In the most recent Office Action, claim 24 was also rejected for the first time under 35 U.S.C. § 103 as being unpatentable over the *Braun* patent in view of the *Medina Puerta et al.* patent. Again, there was no amendment to claim 24 that necessitated such a rejection. In other words, there is no reason why the rejection could not have been made in the prior Office Action.

Claims 9, 10 and 28 were rejected under the second paragraph of 35 U.S.C. § 112. The basis for this rejection is that the term "strongly convex" appearing in claims 9 and 28 is a subjective limitation. The term "strongly convex" was present in claim 9 as part of the original application, and has remained there throughout. If the rejection is proper, there is no apparent reason why it was not presented in the first Office Action.

For at least the foregoing reasons, it is respectfully submitted that the finality of the most recent Office Action is improper, and should be withdrawn. Applicants did not make any amendments to claims 9, 24, 25 or 26 that "necessitated" the rejections that have been applied to these claims for the first time in the final Office Action. If any of the rejections are proper, they could have, and should have, been made in a prior Office Action.

Withdrawal of the finality is therefore respectfully requested.

Applicants would also like to note that the prior Office Action, dated September 26, 2001, contained an objection to claims 21-24 on the grounds that they depended upon a

Application No. 09/450,271
Attorney's Docket No. 018656-107
Page 3

higher numbered claim (claim 25). This objection was traversed in the response filed March 26, 2002. Furthermore, Applicants requested that, if the objection was maintained, the Examiner to provide a basis for it. In the most recent Office Action, the objection was repeated with respect to claim 21. However, the Office Action does not address the substance of Applicants' traversal, and does not provide any support for the request to renumber the claim. Applicants respectfully request that this objection be withdrawn, or proper support be provided therefor.

Respectfully submitted,

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